IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

MFA.No. 1066 of 2000()

OPMV.2167/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT/3RD RESPONDENT:

THE ORIENTAL INSURANCE CO.LTD., NOW REPRESENTED BY ITS ASSISTANT MANAGER, MOTOR THIRD PARTY CLAIMS CELL, METRO PALACE, KOCHI-18.

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS/PETITIONER AND RESPONDENTS 1 AND 2:
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1. **K.A.BENNY, S/o. ANTHONY, KALATHIPARAMBIL HOUSE, OCHANTHURUTHU P.O., PUTHUVYPE.**

2. **P.B.SHIBU, PONNATH HOUSE, L.H.ROAD, AZHIKODE P.O., KODUNGALLUR.**

3. **P.B.RATHISH, PONNATH HOUSE, -DO- -DO-**

R1 BY ADV. SRI.T.K.KOSHY
R1 BY ADV. SRI.CEASAR V.PILLA
R2 & R3 BY ADV. SRI.P.V.CHANDRA MOHAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.No.8564/2001 IN M.F.A.No.1066/2000

DISMISSED

09.10.2007 **Sd/-J.B.KOSHY,JUDGE**

Sd/- K.HEMA,JUDGE

TRUE COPY

P.A.TO JUDGE

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1066 OF 2000 (B)

Dated this the 9th day of October, 2007

J U D G M E N T

KOSHY,J.

Insurance company filed this appeal questioning the award of the Tribunal in directing them to deposit the compensation. Tribunal found that 2nd respondent driver (3rd respondent in the appeal) was responsible for the accident and therefore 1st respondent owner (2nd respondent in the appeal) is also vicariously liable to pay compensation and since the vehicle was insured by the appellant Insurance company, it should deposit the compensation awarded. The contention of the appellant is that at the time of the accident, the driver has no valid driving licence and therefore there is violation of policy conditions and therefore Insurance company is not liable to deposit the amount and even if it is liable to deposit the amount it is entitled to get the amount reimbursed from the insured. Ext.B2 is the driving licence. It shows that the licence is only to drive a light motor vehicle. Offending vehicle was a tempo van. Under Rule 7 of the Motor Vehicles

Rules, only after one year of obtaining licence for driving a light motor vehicle, licence to drive transport vehicle can be granted. Section 4(2) makes it clear that only after completing 20 years of age badge to drive transport vehicle can be granted. The driver was admittedly aged only 19 years at the time of accident. Therefore he is not entitled to drive a transport vehicle. In other words he has no badge to drive a commercial/transport vehicle. He was charge sheeted for not having badge and not entitled to drive a transport vehicle. The learned counsel for the owner of the vehicle submits that in ***National Insurance Co. Ltd. v. Swaran Singh and others (AIR 2004 SC 1531)*** Honourable Supreme Court held that unless the Insurance company proves that absence of licence is the cause of the accident the Insurance company cannot deny the liability if there is valid insurance. But it was followed and explained in a subsequent decision in ***National Insurance Co. Ltd. v. Kusum Rai (2006 (2) KLT 300 (SC))*** wherein it was held that in the absence of licence to drive a transport vehicle, the Insurance company can recover the amount from the insured. Perhaps in a case where it is proved that absence of badge alone is not a cause of accident or there is no negligence on the part of the owner in engaging the driver,

Insurance company cannot escape from the liability to pay compensation. But in this case, the driver was aged only 19. He was not allowed to drive a transport vehicle. Owner is nobody other than his only brother. He allowed him to drive a vehicle. Hence negligence of the owner also can be presumed. When he was a youngster at least the owner, his own elder brother ought have known that he is not entitled to drive a tempo van at the age of 19. Here he is disqualified to run a transport vehicle. So, even observations in Swaran Singh's case (supra) is of no help to the claimants. There is a violation of policy condition. In the above circumstances, we agree with the contentions of the Insurance company that there is violation of policy conditions and therefore compensation awarded and deposited by the Insurance company can be realised from the insured by execution of the award itself. Award is modified to the above extent and appeal is partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1066 OF 2000 (B)

J U D G M E N T

9th October, 2007